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7590  
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EXAMINER
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MERCIER, MELISSA S

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PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* NINA L. WALTERS and VICKI ANNE WEST

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Appeal 2009-014794  
Application 10/774,968  
Technology Center 1600

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Decided: June 4, 2010

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Before ERIC GRIMES, MELANIE L. McCOLLUM, and JEFFREY N.  
FREDMAN, *Administrative Patent Judges*.

GRIMES, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a lotion applicator. The Examiner has rejected the claims as obvious. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

## STATEMENT OF THE CASE

Claims 1-17 are on appeal. Claims 1 and 6 are representative and read as follows:

1. A lotion applicator for applying lotion to a body of a person, comprising:  
an applicator body;  
a handle that extends from said applicator body;  
a sheet that is impregnated with lotion; and  
a fastener that is associated with at least one selected from a group consisting of said lotion-impregnated sheet and said applicator body and that removably attaches said lotion-impregnated sheet to said applicator body.

6. The lotion applicator of Claim 1 wherein said applicator body includes a top surface having an arcuate cross section and a bottom surface having a planar surface.

### *Issue*

The Examiner has rejected claims 1-13 under 35 U.S.C. § 103(a) as being obvious in view of Steinberg<sup>1</sup> and Brower.<sup>2</sup> The claims have been argued in two groups: claims 2-5 and 7-10 stand or fall with claim 1; claims 11-13 stand or fall with claim 6. 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner finds that Steinberg discloses “a device for providing self-assisting hygienic activity to individuals of limited dexterity, the device including an elongated body” having a handle at one end and a hygienic related accessory at the other end (Ans. 3); the accessory can include an attached sheet (*id.* at 4). The Examiner finds that Brower discloses a lotion-impregnated sheet for applying lotion to a user’s skin (*id.*). The Examiner concludes that it would have been obvious to a person of ordinary skill in the

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<sup>1</sup> Steinberg, US 6,981,293 B2, Jan. 3, 2006

<sup>2</sup> Brower et al., US 6,250,829 B1, June 26, 2001

art to combine Brower's lotion-impregnated sheet with Steinberg's device "since Steinberg discloses the objective of the apparatus is to provide self-assisting hygienic activity to individuals of limited dexterity" (*id.*).

Appellants contend that it would not have been obvious to combine the references because Steinberg discloses that the device with a sheet attached is used for cleaning, not applying lotion (Appeal Br. 8-10), and Brower's product is intended to be worn on a user's hand, not attached to a handle or body (Appeal Br. 11).

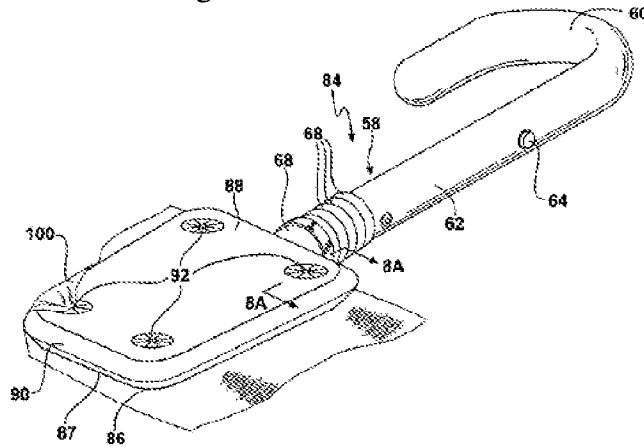
The issue with respect to this rejection is: Does the evidence of record support the Examiner's conclusion that it would have been obvious to one of ordinary skill in the art to combine Brower's lotion-impregnated sheet with Steinberg's device?

#### *Findings of Fact*

1. Steinberg discloses "a personal hygiene accessory ... in the form of an ergonomically configured, extensible and positionable device capable of supporting a number of different accessories for assisting persons of limited mobility and dexterity" (Steinberg, col. 2, ll. 3-7).

2. Steinberg discloses that the accessories include a "non-porous rubber based lotion dispensing attachment, and disposable sheet attachment" (*id.* at col. 2, ll. 44-48).

3. Figure 8 of Steinberg is shown below:



The figure shows an embodiment “in which a disposable sheet is releasably secured to a selected face of a planar attachment portion through the provision of an edge configured gripping location” (*id.* at col. 3, ll. 18-22).

4. Brower discloses “a storage and applicator article for the convenient and controlled application of a lotion, preferably a sunscreen or insect repellent” (Brower, col. 2, ll. 43-47).

5. Brower discloses that the “applicator comprises a flexible thin sheet impregnated with the lotion and formed into a cavity ... into which at least a portion of the user's hand may be inserted for manipulation of the flexible thin sheet” (*id.* at col. 2, ll. 47-56.)

### *Principles of Law*

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).

The obviousness analysis “can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* at 418.

“[I]n general, a reference will teach away if it suggests that the line of development flowing from the reference’s disclosure is unlikely to be productive of the result sought by the applicant.” *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

### *Analysis*

Claim 1 is directed to a lotion applicator comprising a body, a handle, a sheet that is impregnated with lotion, and a fastener that attaches the sheet to the body.

Steinberg discloses a device for assisting with personal hygiene that comprises a handle and a body with a disposable sheet attached to it. Brower discloses a lotion applicator that comprises a sheet impregnated with lotion, such as sunscreen or insect repellent, and formed into a pocket shape so that a user’s hand can be inserted to apply the lotion. The Examiner concludes that Steinberg’s self-assist hygiene device “is analogous to the hand taught by Brown [sic, Brower]. Thus, one using Steinberg’s device rather than a hand to reach body parts due to limited dexterity, would use Brown’s [sic] impregnated sheet on the device rather than the hand” (Ans. 6). We agree with the Examiner’s reasoning.

Appellants argue that Steinberg uses a “disposable sheet ... for cleaning and removal of debris – not applying lotion” (Appeal Br. 8) and discloses that lotion is applied with a roller ball applicator (*id.* at 9). Appellants argue that “[by] expressly teaching the use of the refillable roller applicator for lotion application, Steinberg et al. expressly teach away from using disposable sheets impregnated with lotion” (*id.* at 10). Appellants also argue that Brower teaches away from the claimed invention because its lotion applicator “is intended to be worn on a user’s hand” (*id.* at 11).

Appellants' arguments are not persuasive. In accord with *In re Gurley*, a reference teaches away when it would lead a person of ordinary skill to expect that the claimed invention would not work. Appellants have pointed to nothing in Steinberg or Brower that would lead a skilled worker to expect that Steinberg's device would not work to apply lotion using Brower's lotion-impregnated sheet. Appellants' arguments address the references separately, rather than addressing what their combined teachings would have suggested to a person of ordinary skill in the art.

Claim 6 depends from claim 1 and further requires that the "applicator body includes a top surface having an arcuate cross section." The Examiner finds that the references do not disclose this shape for the top surface, "barring a showing to criticality of the claimed design, ... it would have been obvious to a person of ordinary skill in the art to design the applicator body in any manner suitable to meet the needs of the intended function" (Ans. 4).

Appellants argue that "Steinberg et al. fail to show, teach or suggest [that] the applicator body includes a top surface having an arcuate cross section and a bottom surface having a substantially planar surface," and that the shape of the body in Steinberg's device is required for its use in cleaning body orifices and surrounding areas (Appeal Br. 14-15).

Appellants' arguments are not persuasive. The references suggest a device, like that shown in Steinberg's Figure 8 (FF 3), with an attached, lotion-impregnated sheet for applying sunscreen or insect repellent. A person of ordinary skill in the art would reasonably expect that the device suggested by the prior art would function with either two planar surfaces as shown by Steinberg or one planar and one arcuate surface. The modification

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required by claim 6 is therefore within the scope of creative steps that a person of ordinary skill in the art would employ.

*Conclusion of Law*

The evidence of record supports the Examiner's conclusion that it would have been obvious to one of ordinary skill in the art to combine Brower's lotion-impregnated sheet with Steinberg's device.

SUMMARY

We affirm the rejection of claims 1-13 under 35 U.S.C. § 103(a).

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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